

**No. 14-19-00154-CR**

In the  
Court of Appeals  
for the  
Fourteenth District of Texas  
at Houston

FILED IN  
14th COURT OF APPEALS  
HOUSTON, TEXAS  
5/1/2020 5:11:04 PM  
CHRISTOPHER A. PRINE  
Clerk

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**No. 1527611**  
In the 208<sup>th</sup> District Court  
Harris County, Texas

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**THE STATE OF TEXAS**  
*Appellant*  
V.  
**JOHN WESLEY BALDWIN**  
*Appellee*

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**SUPPLEMENTAL BRIEF**

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## **TO THE HONORABLE COURT OF APPEALS:**

On April 9, 2020, this Court requested that the parties brief whether its analysis of the search warrant affidavit is governed by articles 18.02(a)(14) and 18.0215 of the Texas Code of Criminal Procedure. Article 18.02(a)(14) permits a search warrant for a cellular phone as long as the affidavit complies with article 18.0215. Article 18.0215 requires a warrant for the search of a cellular phone, generally prohibiting searches incident to arrest. The article also sets forth the following mandatory requirements for the affidavit supporting the warrant:

The application must:

- (1) state the name, department, agency, and address of the applicant;
- (2) identify the cellular telephone ... to be searched;
- (3) state the name of the owner or possessor of the telephone ... to be searched;
- (4) state the judicial district in which:

(A) the law enforcement agency that employs the peace officer is located, if the telephone or device is in the officer's possession; ...

; and

- (5) state the facts and circumstances that provide the applicant with probable cause to believe that:

(A) criminal activity has been, is, or will be committed; and

(B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).

The affidavit purportedly supporting the issuance of appellee's cellular phone fails to state the judicial district where the Harris County Sheriff's Office is located, in accordance with article 18.0215(c)(4)(A). Thus, the affidavit does not comply with the strict requirements of the statute.

Additionally, the affidavit fails to establish probable cause as required by the Fourth Amendment of the United States Constitution and article 18.0215. The affidavit accompanying the search warrant does not allege specific facts establishing probable cause that appellee, or the vehicle he was driving four days after the offense, were linked to the murder being investigated. Further, the affidavit does not contain any evidence that the seized cell phone contained evidence of the offense. Any inference to the contrary is unreasonable.

## **CONCLUSION**

Appellee respectfully urges this Court to overrule appellant's points of error and uphold the trial court's order suppressing evidence derived from the search warrant.

Respectfully submitted,

/s/ Mandy Miller

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## **CERTIFICATE OF COMPLIANCE**

In accordance with the Texas Rules of Appellate Procedure, I hereby certify that appellee's supplemental brief, filed on April 29, 2020, has 533 words based upon a word count under MS Word.

/s/ Mandy Miller

**MANDY MILLER**

**CERTIFICATE OF SERVICE**

Appellant has transmitted a copy of the foregoing instrument to counsel for the  
State of Texas via eservice on April 29, 2020 at:

Cory Stott  
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/s/ Mandy Miller  
**MANDY MILLER**

### **Automated Certificate of eService**

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